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27 January 2006
by Fax and Federal ExpressENTERED
Office of Proceedings

JAN 27 2006

Part of
Public RecordHon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001Re: PYCO Industries, Inc. -- Alternative Rail Service
-- South Plains Switching, Ltd., F.D. 34802Request for Imposition of Service
Protocol

Response to SAW Letter of 27 January

Expedited Treatment Requested; please
distribute immediately

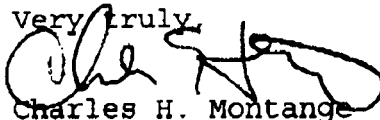
Dear Mr. Secretary:

On behalf of PYCO Industries, I am providing herewith for fax filing a Declaration by Gail Kring, which responds to Mr. McFarland's letter of 27 January to PYCO's Request for Imposition of a Service Protocol.

I certify service by fax per the cover sheet on this date, and I also certify express service, next business day delivery, upon Mr. McFarland, counsel for SAW.

Thank you for your assistance in this matter.

Very truly,

Charles H. Montange
counsel for PYCO Industries

Encl.

cc. Melvin Clemens, Director, OCE
John Heffner, Esq. (for WTL)
Thomas McFarland, Esq. (for SAW)
Gary McLaren, Esq. (for PYCO)
all w/encl

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --)
ALTERNATIVE RAIL SERVICE --) F.D. 34802
SOUTH PLAINS SWITCHING LTD.)

DECLARATION OF
of
GAIL KRING

I, Gail Kring, Chief Executive Officer and General Manager of PYCO Industries, Inc., make this Declaration in connection with the statements and positions of Mr. McFarland, representing South Plains Switching (SAW), the incumbent rail carrier in this alternative rail service proceeding.

1. PYCO has requested a protocol providing that alternative provider West Texas and Lubbock have control of dispatch for 12 hours per day, 7 AM to 7 PM. This does not mean that WTL would have exclusive access to the track during this period. Rather, it permits WTL to control dispatch so that it can provide adequate service to PYCO safely. PYCO is by far and away the largest customer of SAW -- at least half and probably over two-thirds of carloadings of SAW. Nonetheless, neither WTL nor PYCO has an interest in degrading service to other SAW customers. WTL while in charge of dispatch will do its best to control access so as to permit SAW's crews to serve SAW's remaining customers. However, we view it as essential that WTL be in charge of dispatch. SAW has manifested a consistent pattern of non-cooperation; an unfortunate willingness to create, contrive, and magnify disputes; and a repeated tendency

to bully, retaliate, and embargo PYCO shipments. If SAW is left in control of dispatch, PYCO has no assurance of reliable and adequate service from any carrier on this line.

2. Mr. McFarland's letter makes a number of assertions that are misleading or incorrect.

a) SAW did NOT offer weekend service to PYCO for January 14/15. SAW did offer weekend service to PYCO for January 21/22, but made the offer only after PYCO had dismissed its loading crews for the weekend. PYCO suspected that the offer was contrived for litigation purposes anyway.

b) SAW claims that PYCO did not take any service for nine days in January for Plant No. 2. That statement is very misleading. First, it counts the four weekend days that SAW claims it offered service already discussed in point (a) above. Second, PYCO did not order cars on five business days for Plant No. 2 in January, because PYCO has to fumigate the cottonseed and cannot ship for a five day period afterward. PYCO, however, was prepared to ship additional cars, including cottonseed, from Plant No. 1 during that time, but SAW refused to provide adequate switching. In the end, all SAW proves by this episode is that its refusal to provide more than one switch per day at Plant No. 1 is even less excusable than before.

c) SAW makes a variety of claims about access to Plant No. 2 via SAW track 9298. This is basically a rehash of SAW's failure to provide service to Plant No. 2 last spring when SAW blamed the lack of service on BNSF. That episode is recounted

in the draft alternative service petition which we supplied with our December 20 petition. The bottom line is that SAW operates trains through Farmers Compress in discharge (inadequate) of its common carrier obligation, so WTL should be able to do so as well.

d) When PYCO suggested control of dispatch for a five hour period in its original pleading, PYCO calculated that this time would be sufficient for PYCO to load rail cars at Plant No. 1. PYCO, which is not a railroad operator, did not include the time necessary reliably to interchange with BNSF, and to ensure minimal interference with SAW's other customers. After taking further advice, PYCO concluded that for the benefit of reliable and safe operations for all concerned, WTL must be in charge of dispatch for 12 hours per day. In short, in order to allow adequate service to SAW's other customers by SAW and yet permit adequate service to PYCO, WTL should have an ample window in which it controls dispatch. Moreover, PYCO's backlog is now much greater than when the petition was originally filed.

3. Mr. McFarland's letter states that as of January 26, Mr. Larry Wisener had resigned as President and General Manager of SAW. Mr. McFarland represents that the owner of SAW (Delilah Wisener) offers negotiations with PYCO. Delilah Wisener is the wife of Larry Wisener and they are not estranged. Although Mr. McFarland and Delilah Wisener represent that Delilah Wisener is the owner, it is PYCO's understanding that SAW is owned by Larry Wisener, his wife Delilah, and their two children. There is

Larry Wisener and they are not estranged. Although Mr. McFarland and Delilah Wisener represent that Delilah Wisener is the owner, it is PYCO's understanding that SAW is owned by Larry Wisener, his wife Delilah, and their two children. There is absolutely no reason to believe that Mr. Wisener's resignation as President and General Manager will result in any change in SAW's policies, operations, manner of doing business, or ability or willingness to provide adequate rail service. Indeed, the objections raised in Mr. McFarland's letter at page 2 suggest to us that we can only expect more of what we experienced in the past from SAW. While PYCO will be open to whatever Mrs. Wisener has to say, PYCO requires adequate rail service, and requests that this Board immediately issue a protocol as requested by PYCO to that end.

Pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 1-27-06.

Paul King

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THOMAS F. MCFARLAND

January 27, 2006

By electronic mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 34802, *PYCO Industries, Inc. -- Alternative Rail Service*
-- South Plains Switching, Ltd. Co.

Dear Mr. Williams:

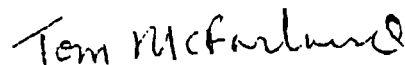
The letter to you in the above matter from John D. Heffner, Esq., attorney for West Texas & Lubbock Railway Co., Inc. (WTL), dated January 27, 2006, contains several misstatements which should be corrected.

Mr. Heffner says that WTL and its counsel contacted me to negotiate regarding operating protocols. In fact, it was just the opposite; I contacted Mr. Heffner for that purpose.

Mr. Heffner says that I advised him the "SAW would not participate in any conference call." In fact, I told Mr. Heffner that after conferring with Mr. Larry D. Wisener of SAW, I would be SAW's participant in the conference call regarding negotiations. That was done to avoid personality conflicts. I was fully able to confer with Mr. Wisener and represent SAW's interests.

Mr. Heffner says that WTL diligently negotiated with SAW's counsel. In fact, WTL never budged from its demand for a 12-hour operating window.

Very truly yours,



Thomas F. McFarland
Attorney for South Plains
Switching, Ltd. Co.

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cc: Charles H. Montange, Esq., by fax to 206-546-3739
John Heffner, Esq., by fax to 202-296-3939
Mr. Mel Clemens, by fax to 202-565-9011
STB Office of Proceedings, by fax to 202-565-9002
Mrs. Delilah Wisener, by fax to 806-828-4863
Mr. Dennis Olmstead, by fax to 970-249-4099

27
~~28~~ January 2006
~~10:30~~ PM Pacific
12:30

Fax: Vernon Williams, Secretary
STB and Office of Proceedings
for fax filing 202-565-9002

Melvin Clemens, Director, OCE 202-565-9011

Thomas McFarland, Esq. (for SAW) 312-201-9695

John Heffner, Esq. (for WTL) 202-296-3939

Gary McLaren, Esq. (for PYCO) 806-785-2521

Re: F.D. 34802

From: Charles H. Montange (for PYCO)

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